

VII. PROBLEM RESOLUTION

- A. Either ODJFS's Chief of the BLTCF or ODH's Chief of the Division of Quality Assurance shall immediately notify the other of any problems they believe may jeopardize the state's ability to meet federal fiscal, program, or procedural requirements. This notification shall be made in writing, in the form of a "decision memo". The notification will include a request to schedule, within ten (10) working days, a meeting to address the problem.

The agency requesting the meeting should be prepared to:

1. Clearly describe the problem;
2. Identify the scope or extent of the problem;
3. Recommend action needed to solve the problem; and
4. Provide a rationale for the recommended action.

To facilitate discussion, the agency requesting the meeting should distribute a "decision memo" in advance of the meeting. A "decision memo" is a one (1) to two (2) page memorandum using the following format:

1. Issue:
2. Recommendation (s):
3. Background:
4. Rationale:
5. Action Required: - By ODH or ODJFS

If a meeting cannot be arranged with ten (10) working days of receipt of a decision memo, the agency receiving the memo should respond, in writing, either accepting the recommendation or proposing an alternative.

All decision memos between agencies shall be exchanged at the Bureau/Division Chief level even though the problem discussed may be within an operational unit.

- B. If, in either agency's judgement, insufficient progress in meeting any requirements outlined in this agreement is being made, then either agency may request that the Director of ODH, the Director of ODJFS, and the Governor's Executive Assistant for Health and Human Services or other designee, meet to determine an appropriate resolution of the problem.
- C. In the event that a federal disallowance is either threatened assessed against the State as a result of an alleged failure to meet federal fiscal, program, or procedural requirements, or any requirements outlined in this agreement, either agency may request that the Director of ODH, the Director of ODJFS, and the Governor's Executive Assistant for Health and Human Services or designee, meet to determine an appropriate resolution to the problems.
- D. ODJFS may take such other action as necessary to protect the best interest of Medicaid recipients or of the State.

TN # ~~00-009~~ APPROVAL DATE _____
SUPERSEDES
TN # ~~99-004~~ EFFECTIVE DATE 7/1/00

VIII. GENERAL PROVISIONS

A. Effective Dates

This agreement will become effective July 1, 2000, and will remain in effect until June 30, 2001, subject to the cancellation provisions contained in this Agreement.

B. Termination by Notice

1. This agreement may be terminated by either party upon 30 days written notice of termination to the other party. Notice of termination shall be sent or otherwise delivered to the persons: If ODH is terminating the agreement, to Director, Ohio Department of Job and Family Services, 30 East Broad Street, 32nd floor, Columbus, Ohio 43266-0423; or, if ODJFS intends to terminate the agreement, to Director, Ohio Department of Health, 246 North High Street, 7th floor, Columbus, Ohio 43266-0118.
2. This agreement may be terminated immediately in the event there is a loss of funding, disapproval by a federal administrative agency, or upon discovery of non-compliance with any federal or state laws, rules or regulations. In the event termination is pursuant to this paragraph B.2., a notice specifying the reasons for termination shall be sent as soon as possible after the termination in accordance with the procedures set forth in Article V., paragraph B.1.

C. Breach and Default

Upon breach or default of any of the provisions, obligations, or duties embodied in this agreement, the parties may exercise any administrative, contractual, equitable, or legal remedies available, without limitation. The waiver of any occurrence of breach or default is not waiver of such subsequent occurrences, and the parties retain the right to exercise all remedies mentioned herein.

D. Amendments

This agreement may be modified or amended provided that any such modification or amendment is in writing and is signed by the directors of the agencies. It is agreed, however, that any amendments to laws, rules, or regulations cited herein will result in the correlative modification of this agreement, without the necessity for executing written amendment.

E. Equal Employment Opportunity

In carrying out this agreement, ODH shall not discriminate against any employee or applicant for employment because of race, religion, national origin, ancestry, color, sex, sexual orientation, age, disability, or Vietnam-era veteran status. ODH shall ensure that applicants are hired, and that employees are treated during employment without regard to their race, religion, national origin, ancestry, color, sex, sexual orientation, age, disability, or Vietnam-era veteran status.

TN # 99-004 APPROVAL DATE 7/1/00
SUPERSEDES
TN # 99-004 EFFECTIVE DATE 7/1/00

A-00-06-801

Such action shall include, but not be limited to the following: Employment, Upgrading, Demotion, or Transfer; Recruitment or Recruitment Advertising; Layoff or Termination; Rates of Pay or other forms of Compensation; and Selection for Training including Apprenticeship.

ODH agrees to post in conspicuous places, available to employees and applicants for employment, notices stating that ODH complies with all applicable federal and state non-discrimination laws. ODH shall, in all solicitations or advertisements for employees placed by or on behalf of ODH, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex, national origin, ancestry, sexual orientation, Vietnam-era veteran status, disability or age. ODH shall incorporate the foregoing requirements of this paragraph in all of its contracts for any of the work prescribed herein, and shall require all of its subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work.

F. Confidentiality of Information

The parties agree that they shall not use any information, systems, or records made available to either party for any purpose other than to fulfill the obligations specified herein. The parties specifically agree to be bound by the same standards of confidentiality that apply to the employees of either party and the State of Ohio. The terms of this section shall be included in any subcontracts executed by either party for work under this agreement. The parties specifically agree to comply with state and federal confidentiality laws and regulations applicable to the programs under which this agreement is funded. The parties are responsible for obtaining copies of all applicable rules governing confidentiality and for assuring compliance with the rules by employees and contractors of either party.

G. Compliance with Federal and State Laws, Rules and Regulations

ODH agrees to comply with all federal and state laws, rules, regulations, and auditing standards which are applicable to the performance of this agreement.

H. Partial Invalidity

A judicial or administrative finding, order, or decision that any part of this agreement is illegal or invalid shall not invalidate the remainder of the agreement.

I. Records Retention

All records relating to costs, work performed and supporting documentation for invoices submitted to ODJFS by ODH along with copies of all deliverables submitted to ODJFS pursuant to this agreement shall be retained and made available by ODH for audit by the State of Ohio (including, but not limited to ODJFS, the Auditor of State of Ohio, Inspector General or duly authorized law enforcement officials) and agencies of the United States government for a minimum of three (3) years after final payment under this agreement. If an audit is initiated during this time period, ODH shall retain such records until the audit is concluded and all issues resolved.

TN # ~~00-009~~ APPROVAL DATE _____

SUPERSEDES

TN # ~~99-001~~ EFFECTIVE DATE 7/1/00

A-00-06-801

Page 16 of 17

J. Audit Exceptions

1. ODJFS shall be responsible for receiving, replying to, and arranging compliance with any audit exception found by any state or federal audit of this agreement as it pertains to federal or ODJFS funding of the agreement. ODJFS shall promptly notify ODH of any adverse findings which allegedly are the fault of ODH. Upon receipt of notification by ODJFS, ODH shall fully cooperate with ODHS and timely prepare and send to ODJFS its written response to the audit exception.
2. ODH shall be liable for any audit exception that results solely from its acts or omissions in the performance of this agreement. ODJFS shall be liable for any audit exception that results solely from its acts or omissions in the performance of this agreement. In the event that the audit exception result from the acts or omissions of both ODJFS and ODH, the financial liability for the audit exception shall be shared by the parties in proportion to their relative fault.

In the event of a dispute concerning the allocation of financial liability for audit exceptions, the parties agree that the dispute shall be referred to the Office of the Governor for a final, binding determination which allocates financial liability.

3. For the purpose of this section, the term "audit exception", shall include federal disallowance and deferrals.

K. Liability Requirements (other than audit)

To the extent allowable by law, agency agrees to hold the other agency harmless from liability, suits, losses, judgments, damages or other demands brought as a result of its actions or omissions in performance of this agreement. However in the event that an agency is subject to liability, suits, losses, judgments, damages or other demands which are due to the acts or omissions of the other agency, the other agency will not be held harmless.

L. Resolution of Dispute

The agencies agree that the directors of the agencies shall resolve any disputes between the agencies concerning responsibilities under or performance of any of the terms of this agreement. In the event the directors cannot agree to an appropriate resolution to the disputes they shall be referred to the Office of the Governor for a final, binding determination resolving the dispute.

M. Child Support Enforcement

ODH agrees to cooperate with ODJFS and any Ohio Child Support Enforcement Agency (CSEA) in ensuring employees of ODH meet child support obligations established under state law. Further, by executing this agreement, ODH certifies present and compliance with any court order for the withholding of support which is issued pursuant to sections 3113.21 to 3113.217 of the Ohio Revised Code.

TN #~~00-009~~ APPROVAL DATE _____
SUPERSEDES
TN #~~99-004~~ EFFECTIVE DATE 7/1/00

A:00-06-801

Page 17 of 17

N. Drug-Free Workplace

By executing this agreement, the parties certify and affirm that, as applicable to the parties, any subcontractor and/or independent contractor, including all field staff) associated with the project agree to comply with all applicable state and federal laws regarding a drug-free workplace. The parties shall make a good faith effort to ensure that all employees, while working on State, county or private property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

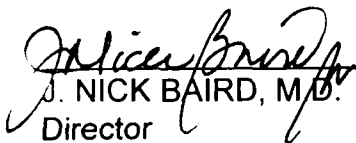
O. Public Assistance Work Program Participants

By executing this agreement, ODH agrees to cooperate with ODJFS and each County Agencies under the jurisdiction of ODJFS as required by law in providing employment and other work opportunities for recipients of assistance under Chapter 5107 of the Revised Code and recipients of food stamps who are required by law to obtain employment or participate in a work program activity.

P. Entirety of Agreement

All terms and conditions of this agreement are embodied herein. No other terms and conditions will be considered a part of this agreement unless expressly agreed upon in writing and signed by both parties.

APPROVED BY:


J. NICK BAIRD, M.D.
Director
Ohio Department of Health
246 North High Street, 7th floor
Columbus, Ohio 43266-0118


JACQUELINE ROMER-SENSKY
Director
Ohio Department of Job and Family Services
30 East Broad Street, 32nd Floor
Columbus, Ohio 43266-0423

DATE: 5.19.00

DATE: 5-23-00

TN #~~00-009~~ APPROVAL DATE _____

SUPERSEDES

TN #~~99-004~~ EFFECTIVE DATE 7/1/00

INTERAGENCY AGREEMENT AMENDMENT

Amendment No. 1

to

A-01-07-001

1. Amendment No. 1 to the Interagency Agreement No. A-01-07-001 (hereinafter referred to as "Agreement") between the Ohio Department of Job and Family Services (hereinafter referred to as "ODJFS") and the Ohio Department of Health (hereinafter referred to as "ODH"), effective July 1, 2000.

2. In order to correct substantive and typographical errors appearing in the Agreement, the following changes are hereby made:

a. Page 1, Article I, is hereby amended to read as follows:

"This agreement is entered into by the Ohio Department of Job and Family Services (hereinafter "ODJFS") and the Ohio Department of Health (hereinafter "ODH") for the purpose of defining the responsibilities of the two parties as they relate to administration of the Ohio Medical Assistance program (hereinafter "the Medicaid program"), ODH's survey and certification of long-term care facilities, enforcement actions against long-term care facilities with deficiencies, and activities regarding resident assessment data collection and use."

b. Page 1, Article II, is hereby amended to read as follows:

~~"This agreement is written in accordance with and pursuant to :~~

- Sections 1819, 1902(a)(5), 1902(a)(9), and 1919(h)(2) of the Social Security Act;
- 42 CFR, parts 483 and 488;
- 42 CFR, part 431, subpart A and M;
- 42 CFR part 442, subpart A; and
- Sections 3721.022, 5111.01, 5111.37 and 5111.38 of the Ohio Revised Code."

c. Page 1, Article III, Section A, is hereby amended to read as follows:

"In accordance with Section 1902(a)(5) of the Social Security Act, as amended, 42 CFR 431.610, and the Ohio State Plan for Medical Assistance, and pursuant to Section 5111.01 of the Revised Code, ODJFS is designated as the single state agency responsible for supervising the administration of the Medicaid program under Title XIX of the Social Security Act."

d. Page 2, Article III, Section B, Paragraph 8, is hereby amended to read as follows

"Certify state funds available and submit to Health Care Financing Administration (HCFA), with a copy to ODH, quarterly estimates of expenditures by the forty-fifth (45th) day before the beginning of the quarter covered by the report. ~~ODJFS~~ shall also submit to HCFA, Quarterly Expenditure Reports by the thirtieth (30th) day following the end of the quarter."

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TN #00-001 APPROVAL DATE _____
 SUPERSEDES
 TN #99-004 EFFECTIVE DATE 7/1/00

- e. Page 3, Article III, Section C, Paragraph 10, is hereby amended to read as follows:

"ODJFS will monitor and oversee ODH's operation of enforcement by:"

- f. Page 4, Article III, Section D, the first paragraph is hereby amended to read as follows:

"In consideration of the services rendered in accordance with a currently effective interagency agreement, ODJFS shall reimburse ODH, upon proper invoicing and preparation of Intrastate Transfer Vouchers (ISTV), the Federal share of the actual costs allowable under applicable federal regulations and guidelines associated with the performance of ODH's duties and responsibilities."

- g. Page 6, Article IV, Section E entitled "Complaints" is hereby amended to be Section "C."

- h. Page 6, Article IV, Section D, is hereby amended to read as follows:

"ODH shall conduct an appeal process in accordance with applicable state law and rule, 42 CFR 431, Subpart D, and the State Operations Manual for facilities whose certification has been denied, terminated, or not renewed or in which other remedies have been imposed."

- i. Page 6, Article IV, Section E, Paragraph A, is hereby amended to be Paragraph "1."

- j. Page 7, Article IV, Section E, Paragraph 3, is hereby amended to read as follows:

"ODH, in accordance with applicable state and federal law and regulations, will impose remedies against nursing facilities with deficiencies, including the following:"

- k. Page 7, Article IV, Section E, Paragraph 3, Subsection d, is hereby amended to read as follows:

"Issuance and termination of orders denying Medicaid payments for all Medicaid-eligible residents. ODH will immediately notify ODJFS of the issuance of such orders."

- l. Page 7, Article IV, Section E, Paragraph 6, is hereby amended to read as follows:

"ODH will issue notice to NFs of remedies being imposed, in accordance with applicable state and federal laws and regulations."

- m. Page 9, Article IV, Section G, the second paragraph of the Section (first paragraph on page 9) is hereby amended to read as follows:

"Any subcontracts entered into by ODH shall be written in accordance with this agreement, and no subcontract provision shall supersede any statements herein. ODH shall submit to ODJFS a copy of any subcontract which delegates any of ODH's survey and certification responsibilities for Medicaid NFs."

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TN #00-009 APPROVAL DATE _____

SUPERSEDES

TN #99-004 EFFECTIVE DATE 7/1/00

- n. Page 9, Article IV, Section G, Paragraph 1, the third paragraph is hereby amended to read as follows:

"ODH shall provide ODJFS, BLTCF with current listings of all state-approved NF nurse aide training and competency evaluation (TCE) and train-the-trainer (TTT) programs. ODH shall also notify ODJFS of all TCE and TTT programs for which state approval is revoked."

- o. Page 9, Article V, the first paragraph is hereby amended to read as follows:

"42 CFR Section 483.20 requires that NFs conduct comprehensive resident assessments consistent with the requirements for each state's specified resident assessment instrument (RAI) and perform quarterly reviews to assure the continued accuracy of the assessments. Ohio has selected the Minimum Data Set (MDS 2.0) as the state-specified RAI and quarterly review document. The Ohio Medicaid NF payment system uses the MDS 2.0 to establish case mix levels of facilities and determine direct care rates."

- p. Page 9, Article V, Section D entitled "ODH Responsibilities" is hereby amended to be Section "A."

- q. Page 9, Article V, Section D (new Section "A" as amended by Section o. of this amendment), Paragraph 1, is hereby amended to read as follows:

"ODH shall report to ODJFS for all nursing facilities surveyed:"

- r. Page 9, Article V, Section D (new Section "A" as amended by Section o. of this amendment), Paragraph 1, Subsection a, is hereby amended to read as follows:

"Assessment-related survey findings; and"

- s. Page 10, Article V, Section D (new Section "A" as amended by Section o. of this amendment), Paragraph 2, is hereby amended to read as follows:

"ODH shall report ICF-MR survey findings to ODJFS if such facilities are out of compliance with the federal conditions of participation concerning active treatment (42 CFR 483.440)."

- t. Page 10, Article V, Section D (new Section "A" as amended by Section o. of this amendment), Paragraph 3, is hereby amended to read as follows:

"ODH shall cooperate in the provision of training of NF and SNF/NF providers on the RAI and use of the facility certification and Medicaid case mix payment system. Training may be provided by state employees or entities with whom ODH and/or ODJFS has contracted. ODH shall select and supervise content of training sessions related to certification of facilities, including use of resident assessment protocols and triggers, and development of care plans, and select and/or approve presenters."

TN #~~00-009~~ APPROVAL DATE _____
SUPERSEDES
TN #~~99-004~~ EFFECTIVE DATE 1/1/00

- u. Page 10, Article V, Section D (new Section "A" as amended by Section o. of this amendment), Paragraph 5, is hereby amended to read as follows:

"ODH, in consultation with ODJFS, shall coordinate and shall develop a Quality Indicators (QI) data analysis and reporting system that utilizes Minimum Data Set information. ODH shall have sole responsibility for the development and publication of quality indicator reports based on the MDS data and produced by this system. All QI data and reporting developed from this system will be made available to ODJFS. ODJFS and ODH shall share information and consult with each other regarding the development of reports, other than the QI reports, on an ongoing basis. ODH and ODJFS shall jointly develop reports, other than the QI reports, as necessary to ensure consistency, reliability, and the efficient use of resources.

ODH shall prepare and electronically transmit or mail QI reports to all Medicaid providers on a quarterly basis at no charge to the provider. ODH shall provide ODJFS with all data sent to providers in a mutually-acceptable electronic format within ten (10) business days of distribution of QI reports to the providers."

- v. Page 10, Article V, Section E, is hereby amended to be Section "B."
- w. Page 11, Article V, Section F, is hereby amended to be Section "C."
- x. Page 11, Article V, Section F (new Section "C" as amended by Section v. of this amendment), Paragraph 1, Subsection a, is hereby amended to read as follows:

"ODH shall maintain an MDS 2.0 Help Desk to respond to facility and software vendor questions related to MDS 2.0 coding and transmission. The Help Desk staff shall have the expertise needed to provide same day response to questions related to dial-in requirements, including Netscape transmission procedures. ODH will notify ODJFS within 72 (seventy-two) hours of any new MDS 2.0 coding instructions, interpretations and/or clarifications given to nursing facility staff either in writing or through the Help Desk. ODH shall consult with ODJFS on MDS 2.0 questions related to items used in the Medicaid payment system prior to issuing new or revised instructions, interpretations and/or clarifications."

- y. Page 12, Article V, Section F (new Section "C" as amended by Section v. of this amendment), Paragraph 3, is hereby amended to read as follows:

"ODH shall ensure ODJFS read only access to the data base including the Data Management System on a twenty-four (24) hour per day/seven (7) day per week basis. Full access includes the ability to view, query, browse, print and copy/transfer MDS data to ODJFS data bases using established data transfer methods including automatic data replication techniques. ODH and ODJFS shall mutually agree on a schedule for maintenance down time. Except in an emergency, ODH shall notify ODJFS of any changes to the agreed upon schedule two (2) weeks prior to the effective time of the change. Withing seven (7) days of receipt of such notice ODJFS shall notify ODH if the change would interfere with the ability of ODJFS to carry out its duties and responsibilities. ODH shall notify ODJFS of emergency unscheduled down time of the data system and provide additional notification if the down time is expected to exceed four (4) hours."

TN #~~00-009~~ APPROVAL DATE _____

SUPERSEDES

TN #~~99-004~~ EFFECTIVE DATE _____

- z. Page 12, Article V, Section F (new Section "C" as amended by Section v. of this amendment), Paragraph 4, Subsections a through c are hereby amended to read as follows:

- "a. two-day turnaround for requests for new/changed user IDs for ODJFS staff;
- b. a mechanism to timely add, delete or modify Medicaid provider numbers; and
- c. notification of system enhancements/upgrades. ODH shall notify ODJFS within 72 (seventy-two) hours of receipt of notification of any system changes, upgrades, or enhancements, and shall share all system documentation with ODJFS. Implementation of system changes shall be coordinated with ODJFS to ensure the accurate transfer of data to ODJFS for Medicaid payment purposes."

- aa. Page 12, Article V, Section F (new Section "C" as amended by Section v. of this amendment), Paragraph 5 is hereby amended to read as follows:

"ODH and ODJFS shall have the ability to use the MDS 2.0 client-server system to communicate with facilities for the purposes of data collection and analysis, and to use the system as a mechanism to deliver reports to providers including RUG III case mix payment and QI reports. ODH shall either establish direct access for ODJFS to post notices/reports and download files or provide a mechanism to transfer such data for ODJFS. Should ODH elect to provide this data transfer service, all files shall be downloaded and all reports shall be posted within 72 (seventy-two) hours of receipt by ODH."

- bb. Page 13, Article VII, Section C, is hereby amended to read as follows:

"In the event that a federal disallowance is either threatened or assessed against the State as a result of an alleged failure to meet federal fiscal, program, or procedural requirements, or any requirements outlined in this agreement, either agency may request that the Director of ODH, the Director of ODJFS, and the Governor's Executive Assistant for Health and Human Services or designee, meet to determine an appropriate resolution to the problems."

- cc. Page 14, Article VIII, Section B, Paragraph 2, is hereby amended to read as follows:

"This agreement may be terminated immediately in the event there is a loss of funding, disapproval by a federal administrative agency, or upon discovery of non-compliance with any federal or state laws, rules or regulations. In the event termination is pursuant to this paragraph B.2., a notice specifying the reasons for termination shall be sent as soon as possible after the termination in accordance with the procedures set forth in Article VIII., paragraph B.1."

- dd. Page 16, Article VIII, Section J, Paragraphs 1 and 2 are hereby amended to read as follows:

- "1. ODJFS shall be responsible for receiving, replying to, and arranging compliance with any audit exception found by any state or federal audit of this agreement as it pertains to federal or ODJFS funding of the agreement. ODJFS shall promptly notify ODH of any adverse findings which allegedly are the fault of ODH. Upon receipt of notification by ODH, ODH

SUPERSEDES

TN # 99-004 EFFECTIVE DATE 7/1/00

shall fully cooperate with ODJFS and timely prepare and send to ODJFS its written response to the audit exception.

2. ODH shall be liable for any audit exception that results solely from its acts or omissions in the performance of this agreement. ~~ODJFS shall be liable for any audit exception that results solely from its acts or omissions in the performance of this agreement.~~ In the event that the audit exception results from the acts or omissions of both ODJFS and ODH, the financial liability for the audit exception shall be shared by the parties in proportion to their relative fault.

In the event of a dispute concerning the allocation of financial liability for audit exceptions, the parties agree that the dispute shall be referred to the Office of the Governor for a final, binding determination which allocates financial liability."

- ee. Page 16, Article VIII, Section K is hereby amended to read as follows:

"To the extent allowable by law, each agency agrees to hold the other agency harmless from liability, suits, losses, judgments, damages or other demands brought as a result of its actions or omissions in performance of this agreement. However in the event that an agency is subject to liability, suits, losses, judgments, damages or other demands which are due to the acts or omissions of the other agency, the other agency will not be held harmless."

- ff. Page 17, a new Section Q is hereby added to Article VIII and reads as follows:

"Q. Certification of Availability of Funds _____

All obligations in this agreement are subject to Section 126.07 of the Ohio Revised Code."

3. All other terms of the Contract are hereby affirmed.


For ease of reference, a version of the Agreement as modified by this Amendment is attached hereto. Due to the changes made, the pagination of the attachment has been altered when compared to the original Agreement.

(Signature page follows)

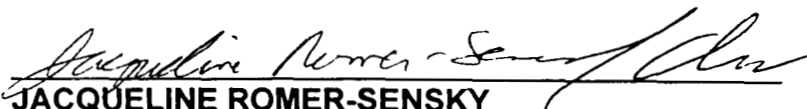
TN #00-009 APPROVAL DATE _____
SUPERSEDES
TN #99-004 EFFECTIVE DATE 7/1/00

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to Interagency Agreement A-01-07-001 as of the date of the signature of the Director of the Ohio Department of Job and Family Services.

APPROVED BY:


J. NICK BAIRD, M.D.
Director
OHIO DEPARTMENT OF HEALTH
246 North High Street, 7th Floor
Columbus, Ohio 43266-0118

9/5/00
Date


JACQUELINE ROMER-SENSKY
Director
OHIO DEPARTMENT OF JOB & FAMILY SERVICES
30 East Broad Street, 32nd Floor
Columbus, Ohio 43266-0423

9-13-00
Date

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TN #DD-009 APPROVAL DATE _____
SUPERSEDES
TN #99-004 EFFECTIVE DATE 7/1/00

ATTACHMENT

(Interagency Agreement as amended for ease of reference)

TN #00-009 APPROVAL DATE _____
SUPERSEDES
TN #99-004 EFFECTIVE DATE 7/1/05